



**PETER A. ROMERO**

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November 23, 2022

**VIA ECF**

Honorable Vernon S. Broderick  
United States District Judge  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, New York 10007

**APPLICATION GRANTED**

**SO ORDERED** *Nov 23*

**VERNON S. BRODERICK**

**U.S.D.J. 11/28/2022**

Re: *Judy Kirton v. Concepts of Independence, Inc.*  
Docket No.: 22-cv-08552 (VSB)

Dear Judge Broderick:

This firm represents the Plaintiff Judy Kirton, in the above-referenced matter, against Defendant Concepts of Independence, Inc., her former employer, for alleged violations of the Fair Labor Standards Act and New York Labor Law. This action was commenced on October 7, 2022. Following service of process, Defendant Concepts of Independence, Inc.'s time to file an Answer or a responsive motion expired yesterday on November 22, 2022. Earlier today, on November 23, 2022, the Court entered an Order directing Plaintiff to file her motion for a default judgment on or before November 30, 2022. D.E. 8. Plaintiff now writes to request an extension of time to serve her motion for a default judgment.

Specifically, Defendant Concepts of Independence, Inc. was served through the New York Secretary of State. D.E. 7. During the period of the pandemic, as well as during recent months, counsel for multiple Defendants in other matters have reported that the New York Secretary of State has forwarded Summons and Complaints more slowly than their past practices. As a result, Defendants in other matters have reported receiving the Summons and Complaint much later, including after their deadline to submit an Answer, and were therefore unable to timely respond. While this Firm cannot determine if that occurred here, this Firm suspects this may be the case and has taken steps to avoid this risk.<sup>1</sup> Earlier today, Plaintiff sent a letter with an additional courtesy copy of the Summons and Complaint and the affidavit of service to Defendant Concepts of Independence, Inc., by USPS first class mail and email, to notify Defendant regarding the lawsuit and that Plaintiff will soon commence proceedings to obtain a default judgment against them. We also took the initial step towards seeking a default judgment by filing a request for a notation of default, which is being sent to Defendant. In the event that Defendant Concepts of Independence, Inc. is learning about this lawsuit for the first time or only recently received notice from the New York Secretary of State, its owners

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<sup>1</sup> Given the likelihood that Defendant Concepts of Independence, Inc. will appear with counsel once they receive notice of this lawsuit and their default, an extension of the deadline to serve a motion for a default judgment is prudent in order to avoid an unnecessary expenditure of attorney's fees to prepare that motion and of the Court's time to decide that motion.

will need time to obtain counsel and appear in this action. In light of the multiple upcoming federal and religious holidays occurring during December, as well as Thanksgiving weekend occurring this week, retaining counsel may take some additional time. Additionally, given the likelihood that Defendant Concepts of Independence, Inc. will appear with counsel once they receive notice of this lawsuit and their default, an extension of the deadline to serve a motion for a default judgment is prudent in order to avoid an unnecessary expenditure of attorney's fees to prepare that motion and of the Court's time to decide that motion.

Separately, Plaintiff's counsel requires additional time to prepare a motion for a default judgment. Doing so will require meeting with Plaintiff to prepare a declaration in support of her motion and to gather and attach any relevant documentary evidence. At present, the undersigned is unable to hold that meeting as I am suffering from Covid-19 and continuing to test positive. The undersigned will be unable to return to the office to conduct such a meeting until I (and my spouse, who is also suffering from Covid-19) test negative for the disease, in accordance with CDC guidelines. Additionally, Plaintiff's counsel similarly needs additional time to prepare a motion for a default judgment in light of the intervening holiday weekend, which removes four of the seven days in the current deadline, and other dispositive motion practice occurring during the same time period. As such, Plaintiff requires additional time to complete preparation of Plaintiff's motion for a default judgment and to meet with Plaintiff to confer regarding and to execute a declaration in support of Plaintiff's his motion for a default judgment.

Accordingly, Plaintiff respectfully requests that her time to serve her motion for a default judgment be extended from November 30, 2022 until December 30, 2022. This is Plaintiff's first request for the relief sought herein.

We thank the Court for its kind consideration of this request.

Respectfully submitted,



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DAVID D. BARNHORN, ESQ.

C: Concepts of Independence, Inc.  
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